

CAMDEN ZONING BOARD OF APPEALS
MINUTES of MEETINGS
February 10, 2011

PRESENT and VOTING: Chair: Frank Toole: Members: Tom Laurent and Sam Smith; and Alternate Member: Jean Blair

ABSENT: Members: Leonard Lookner and George Wheelwright; and Alternate Member Linda Norton

ALSO PRESENT: CEO Steve Wilson

The Meeting was called to Order at 5:15 pm in the Washington Street Conference Room.

1. MINUTES

Review of Minutes was deferred to the end of the meeting.

2. SPECIAL EXCEPTION: BRED, LLC (The Applicant had not yet appeared)

3. SPECIAL EXCEPTION: AHEARN

The Application has been withdrawn because of concerns expressed by neighbors.

4. CONTINUATION of PUBLIC HEARING :

VARIANCE: HIGH ELEVATION DISTRICT PERFORMANCE STANDARDS

Request to exceed the percentage of trees that can be harvested (40%) and the maximum square footage of non-contiguous clearings (7,500 SF) on lots in the High Elevation Overlay District in the Rural 1 (RU-1) District.

Howard and Dorothy Wright: Map 216 Lot 4: Barnes town Road.

VOTING: Mr. Toole, Mr. Smith and Mr. Blair: This is a continuation of the January 27, 2011 meeting and Mr. Laurent was absent.

Mr. Toole noted that the Board had granted Mr. Wright's request for a continuance in order to offer the Applicant's professional forester, Paul Miller, who had been unable to attend the previous meeting, the opportunity to testify. The Chair re-convened the hearing.

Paul Miller: 323 Duluth Road, Washington, Maine: Licensed Forester

He understands that Mr. Wright has provided the history of the management on his woodlot including the ice storm of the early 90's which decreased the growth potential of the trees by either topping them – which results in side branching – or breaking them entirely. The result is a decline in the quality of the timber that is still standing and a lot of dead or dying trees.

The lot has steep slopes, as do other lots in the area, but what is unique about this property is that the landowner has managed this woodlot while the neighboring properties that belong to the Land Trust are not managed. There is one forest to the east that was harvested heavily about thirty years ago and it is now covered with mixed species that includes lots of good high-quality timber. He thinks that this is what Mr. Wright's property would look like if he could do the cutting that needs to be done.

Howard's (Mr. Wright's) lot has beech regeneration. Beech dies early and is not a desirable species. There is no good regeneration opportunity as the lot is now. Removing 40% of the trees would provide a good opportunity for regeneration, but they can't find loggers who will do the job if that is all they can take.

Mr. Smith: Why can't the lot be harvested under the High Elevation Standards – there would still be a return available? Mr. Miller replied that they can't find anybody to do the work. Mr. Smith asked if it would be possible to work the lot with horses and Mr. Miller said that they were working with horses on the lot next door and the intention was that the logger would continue on across to Mr. Wright's lot and cut there – but even he needed to take more than the 40% to make it worthwhile because of the difficulty getting the wood out. Mr. Miller's opinion is that it is difficult to the point of being impossible to use horses here.

MOTION by Mr. Belair seconded by Mr. Smith to close the Public Hearing.

VOTE: 3-0-0

The Chair commenced review of the Application:

Article VIII Section 2 Rural 1 (RU-1) District.

MOTION by Mr. Toole seconded by Mr. Belair to find as a fact that that the property owned by Howard E. and Dorothy Wright, Sr., is located in an area of Camden classified as RU-1.

VOTE: 3-0-0

Article VIII Section 2 E. Standards: “(5) High Elevation Areas:
“Notwithstanding the lists of permitted uses and uses permitted as special exceptions in this district and the space and bulk standards of this district, properties located more than 500 feet above mean sea level shall comply with the standards of Article X, Part 1, Section 2...”

MOTION by Mr. Belair seconded by Mr. Smith to find as a fact that the Wright property is located above 500 feet above sea level.

VOTE: 3-0-0

Article X, Part 1, Section 2: High Elevation Standards

(3) Special Performance Standards (d) Tree cutting for noncommercial or forest management purposes is permitted provided that no more than 40 percent of existing trees five or more inches in diameter, measured two feet above the ground, are removed from any contiguous stand or grouping of trees. In no case shall the area of continuous clearing exceed 7,500 SF.

The Chair states that the Applicant is seeking permission to remove more than 40% of the trees which, on its face, is not permitted.

MOTION by Mr. Belair seconded by Mr. Toole to find as a fact that the Application reads that the Applicant is seeking a variance from Article X 2 (3)(d).

VOTE: 3-0-0

Article VII Section 5. Variances

(3) Standards

Prior to voting to grant a variance, the Zoning Board of Appeals shall review the application and find that the following standards have been met:

(a) That a literal interpretation of the requirement of this Ordinance will impose an undue hardship on the property owner. The term "undue hardship" shall mean specifically that:

(i) the land in question cannot yield a reasonable return unless a variance is granted;

Discussion:

Mr. Smith asked what a "reasonable return" is: His understanding is that it is not a lot, and Mr. Toole agreed.

(ii) the need for the variance is due to unique circumstances of the property and not to the general conditions of the neighborhood;

Discussion:

Mr. Belair noted that the Board has heard that this property is very similar in slope and elevation to neighboring properties which means that it is not particularly unique.

(iii) the hardship is not the result of action taken by the applicant or a prior owner;

Discussion:

Mr. Belair stated that the Board has heard nothing that would indicate that this is otherwise.

and

(iv) the granting of the variance will not alter the essential character of the locality.

Discussion:

Mr. Belair: The Applicant's representative has said that the variance would improve the wood lot.

Mr. Smith: The variance would alter the character of the area because other adjacent areas are not being cut.

The Chair informed the Board that the key was the word "and" – all standards must be met before a Variance can be granted. The fact that any one of them should fail means the request cannot be granted.

(i) reasonable return

Mr. Smith believes it is possible that some return can be gained from this property whether or not the variance is granted.

Mr. Belair read from the memorandum prepared for the Board by Town Attorney Bill Kelly dated January 26, 2011:

"When applying the reasonable return standard to the Wright's variance request, the Board will need to consider whether the Wright's can yield a reasonable return their woodlot if these variances are not granted. If they cannot, the Board will then need to consider whether there is any other reasonably beneficial use of the land other than for tree harvesting. If the Board finds either that the land could continue to support itself as a woodlot without the variance, or that the

Wrights could make some other beneficial use of the land, then a variance would not be justified under the above case law.” (In his discussion of applying this standard Mr. Kelly cited seven Maine cases.) “However, if the Wrights could derive no other benefit from the land unless it is used as a woodlot in accordance with the forester recommendations that would require these variances, the “reasonable return” requirement is satisfied.”

Mr. Blair: “Any return” means “any use” – not just a use as a woodlot.

MOTION by Mr. Belair seconded by Mr. Smith that based on the memo dated January 26, 2011 to the Zoning Board of Appeals from Bill Kelly the Application does not satisfy Section VII 5 (3) (a) (i) because it can yield a reasonable return.

VOTE: 3-0-0

The Chair stated that since the Applicant has failed to meet the first standard – and this is and all or none situation – the request for a variance cannot be granted. Is it the Board’s desire to continue on through the standards to make findings or to end the process here. Mr. Smith and Mr. Belair agreed to stop at this point.

MOTION by Mr. Smith seconded by Mr. Belair that the Application is denied based on the fact that it did not meet the criteria.

VOTE: 3-0-0

2. SPECIAL EXCEPTION: LOW IMPACT USE

Creation of office space: Raymond Brunyanszki, Owner; Oscar Verest, Applicant
81 Bayview Street: Map 119 Lot 23: Traditional Village District (V)

Mr. Verest had not arrived at the point his Application was to be heard. Without his presence the hearing would have to have been continued to another time. A telephone call was made, Mr. Verest arrived and the Application was heard. The Chair read the procedure for Public Hearings. He informed Mr. Verest that there would be four members voting – three regular members and an alternate member. In this case any vote must pass by at least a 3-1 margin for if the vote is tied, the Motion loses.

DECLARATION OF CONFLICT

Members were asked to declare any possible conflicts of interest they might have regarding the case before them; none did.

STANDING

Oscar Verest: 6 Rockbrook Drive, Camden. Mr. Verest, a partner with Mr. Brunyanszki in Breeda, LLC, d.b.a. The Camden Harbour Inn, is not a part owner of 81 Bayview Street, however he has his partner’s general permission to conduct business on his behalf. The Chair finds this sufficient to establish standing.

Mr. Toole, Mr. Laurent, Mr. Smith, and Mr. Belair are voting. It was noted that member George Wheelwright was attending the meeting as a member of the public. He is not sitting in review because his mother is an abutter to this property and he thinks it best not to participate.

Mr. Wilson reports that this is not an appeal of a CEO permit – no action has been taken. This is a request for a Low Impact Use - an office – which is permitted in this District as a Special

Exception because the whole lot is well within 500' of the Transitional Harbor Business District (B-TH) line on Bayview Street.

Mr. Verest and his partner want to convert the lower floor of the 2-story residence to serve as an office for their business next door – the Camden Harbour Inn. This would free up valuable space at the Inn for other uses. The other floor will be left as is and serve as the residence for the Inn's Innkeepers. This combination of office below with residence above is necessary to qualify as a Low Impact Use.

Mr. Smith:

Will access to the building change? Mr. Verest: No – everything will stay the same.

What is the time frame they are working with? Mr. Verest: The only thing their insurance company requires before the Innkeepers move in is that the building be hardwired with a smoke alarm. They anticipate about two weeks before that happens and hope to have the office ready for use this spring.

Mr. Laurent:

How many people will use the office? Mr. Verest: Mostly two people – his partner and himself. On Occasion they might have staff meetings there – no more than once a week. They will also use the private space for meetings with guests and business advisors.

Do they plan a walkway connecting the building to the Inn's parking lot above? Mr. Verest: There are already some steps coming up the bank that the mailman uses to cut through.

If there is no pathway, will that encourage people to park at the house instead of using the Inn parking lot? Mr. Verest doesn't think so.

Mr. Belair:

Will there be any lighting changes? Mr. Verest: They would like to be able to light for insurance purposes, but the building is not meant for the public and does not need the same degree of lighting.

Mr. Laurent: How much room for parking is there. because there is no room to park cars at the house. Mr. Verest There is only the driveway that will hold perhaps three or four cars. Anyone using the drive would have to park end to end and move their car when anyone wanted to leave. He is simply not concerned that people will try to park in the driveway because the lot is so close.

The floor was opened to Proponents, Opponents and those with questions or comments: Mr. Wheelwright had some questions. He has read the list of Special Criteria for Low Impact Uses (a) – (n) and asks Mr. Verest to describe the property as it is now. Mr. Verest: Entering the building off the driveway the stairs to the second story are on the right and through a door is what is currently a home office with a bath. On the 2nd floor is a kitchen, living room, dining room and on the 3rd floor a bedroom and bath.

Will there be any exterior changes? Mr. Verest: No.

Mr. Wheelwright says that lighting is a major concern for abutters when changes like this are made. He asks if any modifications to this proposal are made, would the change come before the Planning Board? He asks the ZBA to consider that this building is bordered by many fairly expensive homes nearby. Mr. Verest replies that it is in the best interest of the Inn to have as little annoying light as possible. This situation would benefit his guests as well as the neighbors.

Mr. Wheelwright comments that the hours of operation appear to be OK for a neighborhood setting. He asks how the ZBA quantifies what is acceptable and specifies what is allowed. What happens if changes are made after approval?

Mr. Wilson replied that there is a permitting process with standards and anything that changes the specific situation that was approved still has to meet those standards. Mr. Toole noted that the ZBA always has the right to craft conditions of approval that must be followed.

MOTION by Mr. Smith seconded by Mr. Laurent to close the Public Hearing.

VOTE: 4-0-0

MOTION by Mr. Smith seconded by Mr. Belair to find that the property at 81 Bayview Street is located in the Traditional Village District of Camden.

VOTE: 4-0-0

MOTION by Mr. Belair to find that the Application by the new owner of 81 Bayview Street is seeking a Special Exception for a Low Impact Use in that neighborhood.

VOTE: 4-0-0

MOTION by Mr. Toole seconded by Mr. Belair that Oscar Verest is the duly recognized agent representing the property owner in the process here tonight.

VOTE: 4-0-0

The Chair drew the Board's attention to the definition of Low Impact Use:

"A commercial or other nonresidential use not otherwise allowed in a zoning district that shares a structure with a dwelling unit and that complies with the standards of Article VII, Section 4, (9) of this Ordinance, which standards are intended to assure that the use fits into its surroundings without adverse impact while allowing a reasonable degree of diversity characteristic of village settings. A low impact use is not required to meet the standards of Article X, Part II, Section 7."

Article VII Section 4: Low Impact Uses

(9) Special Criteria for Low Impact Uses

A low impact use, as defined in this Ordinance, shall:

(a) Be located within a building that also includes one or more dwelling units;

MOTION by Mr. Belair seconded by Mr. Laurent that the Board has heard testimony that the building has one dwelling unit.

VOTE: 4-0-0

(b) Occupy no more than 2,000 square feet of total floor area;

Discussion: The CEO was asked if he knew the dimensions of the first floor. Mr. Wilson replied that he can get the tax card and make that determination, but that the Application states that the total building is less than 1100 SF of living space. If there are three floors the first floor must have to be less than the 2000 SF allowed.

MOTION by Mr. Toole seconded by Mr. Laurent that based on testimony from the CEO the office will be considerably less than the 2000 SF limit of the Ordinance.

VOTE: 4-0-0

(c) Not cause an existing building, whether or not actually occupied by a dwelling unit, to be demolished for the purpose of creating a low impact use;

MOTION by Mr. Laurent seconded by Mr. Belair that the Applicant has testified that there be no changes to the building.

VOTE: 4-0-0

(d) Generate no more than a daily average of 20 vehicular trip ends on week days, based on a data contained in the latest edition of "Trip Generation," published by the Institute of Traffic Engineers, or, if the Code Enforcement Officer is unable to classify the proposed activity into one of the uses listed in this reference work, based on the written opinion of a professional traffic engineer;

MOTION by Mr. Laurent seconded by Mr. Belair that the Applicant has testified that there will be no to minor trips generated because there will be no more than two people working in the office.

VOTE: 4-0-0

(e) Have no more than one curb cut, which shall have a maximum width of 20 feet;

MOTION by Mr. Belair seconded by Mr. Toole Because the Applicant has testified that there is only one driveway and only one curb cut this requirement is met.

VOTE: 4-0-0

(f) Require, in addition to the required number of spaces for the dwelling unit(s), no more than five parking spaces, based on the requirements of Article X, Part II, Section 4 or, if the type of use cannot be classified as one of the uses listed in Section 4, based on the average rates per 1,000 square feet of building area for peak parking spaces occupied as identified in the latest edition of "Parking Generation," published by the Institute of Transportation Engineers;

Discussion: Mr. Toole suggests they find these facts: The Applicant has said that there will be no additional meetings held than there are at the present time; there is ample parking at the inn; and only the Innkeepers will be parking at the house and there is no increased use here in traffic or parking.

MOTION by Mr. Belair seconded by Mr. Smith that the Board has heard no testimony that this requirement won't be met, therefore the requirement is met.

VOTE: 4-0-0

(g) Locate any on-site parking to the rear or side of the building, with no such parking between the building and any street or in the lot's required front yard;

Discussion: The Board has heard the following and the Application contains the same information: No new parking will be created, no new parking is contemplated, and the site precludes any additional parking being added.

MOTION by Mr. Laurent seconded by Mr. Belair that if there is to be no new parking the Application meets the requirements of (g).

VOTE: 4-0-0

(h) Maintain a vegetated buffer between its on-site parking lot and adjacent properties in compliance with Article X, Part II, Section 3, Screening and Landscaping.

MOTION by Mr. Belair seconded by Mr. Laurent that because no parking lot will be created the requirement in Article X Part II for a vegetated buffer is not applicable.

VOTE: 4-0-0

(i) Not generate hourly sound levels resulting from routine operations in excess of 60 dba as measured at the property line;

MOTION by Mr. Laurent seconded by Mr. Smith that as the use will be an office there will be no noise generated.

VOTE: 4-0-0

(j) Not be open for business before 7 a.m. or after 8 p.m.;

MOTION by Mr. Belair seconded by Mr. Smith that the Application says that the office will not be open before 7am or after 8pm. The requirements of (j) have been met.

VOTE: 4-0-0

(k) Comply with the sign regulations of Article XI of this Ordinance relating to residential districts;

MOTION by Mr. Belair seconded by Mr. Toole that the Applicant has testified that there will be no sign and the absence of signage means the Application meets the requirement of (k).

(l) Neither make nor receive shipments in trucks more than 5 times a week;

MOTION by Mr. Belair seconded by Mr. Laurent that the Applicant has testified that all shipments will continue to arrive at the Inn; there will be no deliveries here.

VOTE: 4-0-0

(m) Store materials or display or sell goods only within a fully enclosed building;

MOTION by Mr. Laurent seconded by Mr. Toole that this requirement has been met.

VOTE: 4-0-0

(n) If new construction is involved, achieve a residential appearance, including a roof pitch of at least six in 12 (or 50 percent) and the use of exterior materials typical of residences in the area.

MOTION by Mr. Laurent seconded by Mr. Belair that the Application and testimony say there will be no new construction and the Application meets (n)..

VOTE: 4-0-0

Discussion on Exterior Lighting:

Mr. Belair asks if there already are outside lights. The Applicant didn't know, but Mr. Laurent, a friend of the former owner, is sure there is. Mr. Belair wondered if it would be appropriate to require that any new lighting matches in kind and quality the existing lighting on the building.

Mr. Laurent suggested that if there were any new lighting he would think it would be for safety on the steps. Mr. Verest agreed that it would make it easier to come and go for the Innkeepers. But if there are any lights they will be designed to be inconspicuous – he does not want to interfere with his guests' enjoyment. Mr. Belair asks that they consider the spread of the lights as well as the safety factor – something that will keep the light from going beyond the property boundaries. Mr. Laurent agrees there are many designs for low impact down lighting.

MOTION by Mr. Belair seconded by Mr. Laurent that any additional exterior lighting that is added be down-lighting and that the light stay within the property boundaries.

VOTE: 4-0-0

MOTION by Mr. Toole seconded by Mr. Laurent that all of the criteria of Article VII Section 4 (9) have been complied with.

VOTE: 4-0-0

MOTION by Mr. Belair seconded by Mr. Laurent to Approve the Application for a Special Exception for a Low Impact Use with the added condition regarding exterior lighting.

VOTE: 4-0-0

1. MINUTES

The Board will wait to review the Minutes of January 27, 2011 until the Minutes of this meeting are reviewed so the entire record of the Application of Howard Wright can be reviewed at once.

There being no further business before the Board they adjourned at 6:30 pm.

Respectfully Submitted,

Jeanne Hollingsworth, Recording Secretary